

Spack Solutions Inc. ("SPACK SOLUTIONS INC.")  
Terms and Conditions ("Terms")

**1. General**

- 1.1. Throughout these Terms, "Client", "Clients" refers to the customer, as defined in the quotation.
- 1.2. These terms and conditions are acknowledged and accepted by the client when: (a) a purchase order is issued or (b) an order paid in full through direct payment or captured through a credit card payment (c) this quotation is signed and returned or (d) shipment of SPACK SOLUTIONS INC. product or products is accepted by Client. In any case, any of the client's terms and conditions which are inconsistent with SPACK SOLUTIONS INC.'s terms and conditions will be construed as proposals for additions to this order and will not be binding unless agreed to in writing by SPACK SOLUTIONS INC.

**2. Quotations**

- 2.1. Any quotation submitted by SPACK SOLUTIONS INC. in response to a Client request (verbal or via email or via a document or sent by SPACK SOLUTIONS INC. to client to solicit business with client) ("Quotation") is valid for thirty (30) days from the date of the Quotation unless renewed by SPACK SOLUTIONS INC.. A quotation shall be deemed to have been renewed under these Terms if SPACK SOLUTIONS INC. continues to supply products to Client past the first order and shipment. In any case, if there is any question of which Terms apply to a particular order supplied by SPACK SOLUTIONS INC. to Client, the Terms specified in the latest quotation from SPACK SOLUTIONS INC. to Client shall apply even if the particular product in question was not explicitly listed on quotation.
- 2.2. If at least thirty days have, for any reason, passed between the communication of the quote and the acceptance by the client under these terms, the Seller may raise the purchase price by an amount which corresponds to: the rise in the cost-of-living index and a modification of a tariff agreement and higher production costs and a currency regulation and an alteration of duties and a significant increase in the costs of materials and other costs of manufacture or any change in delivery dates.
- 2.2. All Quotations are subject to revision based on the final evaluation of any requested change by the client in operation or features of the product.

**3. Shipment and Charges and Terms**

- 3.1. All products are shipped FOB Brooklyn Park, Minnesota, USA. Product shall be shipped via Client's preferred method of shipping and client shall be responsible for actual shipping charges and insurance for shipping product from SPACK SOLUTIONS INC.'s place of business (Brooklyn Park, MN). If no shipping preference is expressed, then product shall be shipped via UPS Ground or equivalent and Client shall be responsible for actual shipping charges based on the rates communicated by the preferred carrier as selected by SPACK SOLUTIONS INC.

- 3.2. The deadlines and time periods indicated by the Seller are not binding, unless agreed otherwise in writing. The Seller is not responsible for delays of delivery due to Force Majeure or due to events which make the delivery considerably more difficult or impossible for the Seller, even if binding time periods and delivery deadlines have been agreed. Those events permit the Seller to delay the delivery or service for the duration of the hindrance, or to withdraw from the contract in full or in part in relation to that part that has not been fulfilled. The Seller is always permitted to carry out partial services or deliveries.
- 3.3. The start of the delivery period stated by the Seller is subject to the clarification of all technical questions. Compliance with the delivery obligation of the Seller shall further presuppose punctual and proper performance of the Purchaser's obligations. The right to the plea of non-performance of contract shall remain reserved.
- 3.4. If a fixed and binding time for delivery is provided for in the contract, and the Seller fails to deliver (in accordance with Point (3) of this Article) within such time or any extension thereof granted, the Purchaser shall be entitled, on condition that the arrears in delivery are based on a breach of contract by malice aforethought or gross negligence of the Seller and on giving to the Seller within a reasonable time notice in writing, to claim a reduction of 0,1% of the delivery value for each completed week of arrears, albeit no more than 3% of the delivery value, unless it can be reasonably concluded from the circumstances of the particular case that the Purchaser has suffered no loss.
- 3.5. Liability for any loss of profits or any other consequential losses, including liability for loss of income which can otherwise customarily be achieved with the sold product(s), shall be ruled out.
- 3.6. To the extent possible, the quantity ordered by the Purchaser shall be provided. Any difference in quantity resulting from the delivery note or the invoice shall be notified to the Seller in writing, albeit not later than five (5) working days after receipt of the commodities.

#### **4. Product Performance and Remedy for Non Performance**

- 4.1. SPACK SOLUTIONS INC. undertakes to ensure that the products offered for sale perform as advertised. In the event that they do not perform to the satisfaction of the client or to the client's expectation or interpretation of the advertised performance, SPACK SOLUTIONS INC. shall, at its discretion, undertake reasonable measures to make the product perform as advertised. SPACK SOLUTIONS INC. may at its discretion make available a representative sample to the client, under reasonable business terms, for product performance evaluation and testing in the client's application. Testing of the product shall be the responsibility of the client. In the circumstance that the delivered products quoted in the quotation do not perform as advertised or deviate materially from the operation and performance of the representative sample and SPACK SOLUTIONS INC. is unable or unwilling to make changes necessary to make the products perform to the satisfaction of the client, the remedy available to the client is limited to returning the products for a full replacement of the defective product or application of the purchase price as credit toward other items sold by SPACK SOLUTIONS INC if the product is returned to SPACK SOLUTIONS INC at the client's expense within 90 days after the client has become aware of the non-performance of the

product. UNDER NO CIRCUMSTANCES WILL SPACK SOLUTIONS INC. BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR OTHER BUSINESS DAMAGES ARISING FROM THE NON-CONFORMANCE OR NON-PERFORMANCE OF THE PRODUCT.

## **5. Payment**

5.1. Any payment due under this Agreement, if not paid within thirty (30) days of the invoice date, SPACK SOLUTIONS INC. reserves the right to accrue interest until paid at a rate equal to the lesser of either eighteen percent (18%) per annum or the maximum rate permissible by law. Payment thereafter shall first be applied to accrued interest and then to unpaid principal.

## **6. Warranty**

6.1. SPACK SOLUTIONS INC. warrants its products for a period of one year from the date of shipment. Warranty is limited to repair, replacement of non-performing product, or credit in the amount of the purchase price for alternative SPACK SOLUTIONS INC marketed products. SPACK SOLUTIONS INC., at its option, may repair or replace a non-performing product if non-performing product is returned to SPACK SOLUTIONS INC. at Client's expense. SPACK SOLUTIONS INC. shall ship the replaced or repaired product back to Client via UPS Ground or equivalent. SPACK SOLUTIONS INC. shall not be held liable for any incidental or consequential damages arising from the non-performance of product under warranty period.

## **7. Refunds and Returns**

7.1. SPACK SOLUTIONS INC will offer a 100% refund of purchase product cost minus shipping and handling for merchandise returned at the Client's expense for a period of 14 days from the delivery date. The returned equipment is subject to inspection upon return to SPACK SOLUTIONS INC for purposes of verification of re-sellable condition. SPACK SOLUTIONS INC reserves the right to exclude any portion up to the purchase price if the equipment is not returned in the condition that it was delivered to the client.

7.2. Returned items that do not exhibit manufacturing defects, are not covered under extended warranties, and are received by SPACK SOLUTIONS INC outside of the initial 14 day refund timeline but meet the re-sellable criteria will be assessed a re-stocking fee equal to 50% of the purchase price. The balance will be paid back to the client following a diagnostic review of the equipment and paid under the monetary return terms (7.4).

7.3. Returned equipment that is returned outside of the initial 14 days from delivery date, does not exhibit manufacturer defects, is not covered under extended warranty, and does not meet re-sellable criteria will not be eligible for monetary refund. If items are received by SPACK SOLUTIONS INC that meet this stipulation, the equipment will be returned to the client at their expense.

- 7.4. Monetary refunds will be initiated following a complete diagnostic review of returned equipment and will be performed as a reversal of charges to the credit card used to complete the original purchase or by mailed check for manual purchases.
8. **Indemnity for SPACK SOLUTIONS INC.** Client agrees to release, protect, defend, indemnify, and hold harmless SPACK SOLUTIONS INC. and its members, employees, officers, directors, contractors, agents and representatives (COLLECTIVELY, THE "SPACK SOLUTIONS INC. PARTIES") from and against any and all claims, demands, costs, liabilities, judgments, expenses (including attorneys' fees and costs), or causes of action (collectively, "Claims") arising out of or in connection with Client's application, sale, use or possession of the products, EVEN IF CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF ANY SPACK SOLUTIONS INC. PARTY, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE A RESULT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN SPACK SOLUTIONS INC. PARTY.
9. **Ownership of Intellectual Property.** SPACK SOLUTIONS INC. retains ownership of all intellectual property, design and likeness to design of products and technologies in such products contained in and derived from the design, development and use including new use and application of SPACK SOLUTIONS products offered for sale in the agreement. Nothing herein shall be construed as limiting the right of SPACK SOLUTIONS INC. to further develop, derive, assign or offer for sale its products and technologies to any third parties.
10. **Governing Law.** This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transactions contemplated by it, shall be governed by, construed, and enforced in accordance with the laws of the State of Minnesota (excluding its conflict of laws rules which would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding hereunder shall be brought EXCLUSIVELY in Hennepin County, Minnesota, USA and each of the parties consents to the personal jurisdiction of the courts, state and federal, located therein. Each party agrees to waive any objection that the state or federal courts of Hennepin County, Minnesota, are an inconvenient forum.